

C. REMARKS

I. Allowable Subject Matter

Applicants wish to thank the Examiner for indicating that claims 2-4, 8-10, 13-15 and 19-21 are allowable if rewritten in independent form. Applicants, however, respectfully submit that these claims are allowable in their present form for at least the reasons set forth below.

II. The Section 112 Rejections

Claims 5 and 16 were rejected under 35 U.S.C. §112, first paragraph. Applicants have canceled these claims without prejudice to, or disclaimer of, their subject matter. Accordingly, these rejections are deemed moot.

III. The Section 102 Rejections

Claims 1, 6, 7, 11, 12, 17, 18 and 22 were rejected under 35 U.S.C. §102(e) based on Eibling et al, U.S. Patent No. 7,085,580 ("Eibling"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Each of the claims of the present invention include the generation of an aggregate scaling factor based on a plurality of averaging times selected from a power rating profile. In contrast, Eibling does not appear to derive its scaling factor based on a plurality of averaging times (see column 10, line 66 through column 11, line 6, for example: "The scaling [sic] factor is preferably based on the total power level of the signal set for the current time period, a scaling

factor used during the current time period, and a threshold power level.”). Because Eibling does not disclose a scaling factor derived from a number of averaging times as in the claims of the present invention, it cannot anticipate the claims under §102(e).

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 6, 7, 11, 12, 17, 18 and 22.

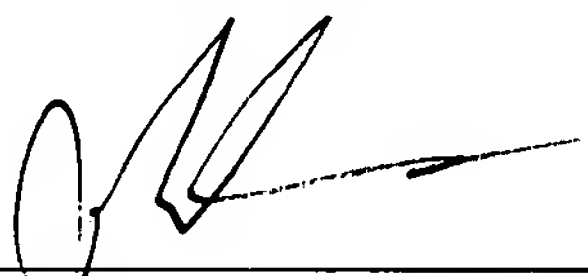
In the event this Response does not place the present application in condition for allowance, Applicants request that the Examiner contact the undersigned at (703) 266-3330 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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